

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1001 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
 2. To be referred to the Reporter or not? Yes.
 3. Whether Their Lordships wish to see the fair copy of the judgement? -
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge?
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SURJIT SINGH KIRPALSINGH ARMED POLICE CONSTABLE

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner
MR B.Y. MANKAD, A.G.P. for respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/01/99

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 17-1-1987 passed by the State Government and the order dated 26-7-1984 passed by the Commissioner of Police and to restore the order of the Deputy Commissioner of Police dated 20-10-1983.

2. The petitioner was serving as a Mounted Armed Police Constable in the Police Department at Ahmedabad. Some incident took place on 18-2-74 wherein the petitioner was alleged to have demanded and obtained illegal gratification along with another police constable and in connection of that incident the petitioner was

suspended by the order dated 16-8-1974 during pendency of the inquiry. After completion of the departmental inquiry the petitioner was dismissed from service by the order dated 8-12-1975. The petitioner challenged the order of dismissal in this Court by filing Special Civil Application No. 181/80. This Court allowed the petition vide the order dated 13/15-10-81 holding that the petitioner was denied reasonable opportunity to defend himself in the Departmental Proceedings held against the petitioner and another police constable. Hence, the impugned orders of dismissal were held to be contrary to the provisions of Article 311 (2) of the Constitution of India and also in breach of Rule 454 (2) of the Bombay Police Manual and the dismissal order was quashed giving directions to the respondents to proceed further a fresh from the point of vitiation in accordance with law and it was open to the department to pass any fresh order of suspension if found necessary. In pursuance of the order dated 13/15-10-81 the petitioner was reinstated in the service by the order dated 8-12-81 and he was also paid back wages from the date of dismissal to the date of reinstatement and no fresh order of suspension was passed after reinstatement. The petitioner was given assistance of a friend of his choice during fresh departmental inquiry and the Deputy Commissioner of Police exonerated the petitioner from the charges levelled against him by the order dated 21-10-83. The Commissioner of Police took up the matter suo motu in revision and issued a show cause notice on 16-4-1984 to the petitioner calling him to show cause as to why punishment of treating the period suspension as spent under suspension should not be imposed. The Commissioner of Police by the order dated 26-7-1984 treated the suspension period as it is. The petitioner being aggrieved by the order of the Commissioner of Police filed an appeal before the State Government on 26-9-84. The petitioner sent reminder dated 21-10-85. Then the State Government issued a show cause notice to the petitioner on 24-12-1985 u/s 27-A of the Bombay Police Act, 1951. It was stated in the show cause notice that the order of the Commissioner of Police treating the suspension period was without authority. The State Government found the charged proved against the petitioner on the basis of the evidence on record and issued the show cause notice dated 24-10-85 with a proposed action as to why stoppage of one increment for one year without future effect and to keep the period of suspension as such should not be taken against the petitioner. The petitioner filed his reply to the show cause notice. The State Government considering the reply of the petitioner imposed penalty of withholding of one increment for one year and treated the period of

suspension as spent under suspension by the order dated 17-1-87.

2. The petitioner has challenged the impugned order of the State Government as stated above in this petition on the grounds mentioned in paragraphs no. 9, 10, 11, 12, 13, 14 and 15.

3. Heard learned counsel for the petitioner and learned Asstt. Govt. Pleader Mr. V.Y. Manakd for the respondents and perused the relevant papers on record. Learned counsel for the petitioner argued that the complainant three students have not been examined in the fresh departmental inquiry. As such the petitioner was not given reasonable opportunity to cross-examine them. As such it is a case of no evidence at all. In this connection, the learned counsel for the petitioner referred to the findings recorded by the State Government which reads as under :

"In this connection it is to be stated that the three students had represented against the applicants for threat of beating and taking to the police station and hence demand of bribe was made. During the first departmental inquiry they had remained present and at that time the charges were held proved. But at the time of second departmental inquiry one had gone abroad and the second was at Delhi and the third was a girl student. Therefore, they could not remain present at the time of second departmental inquiry. These main witnesses had given their statements in the first departmental inquiry. The applicants had the opportunity of cross-examining them at that time, but second time they could not remain present in the departmental inquiry. The charge against the applicant is proved from the complaint made against the police by the concerned students and the letter sent by the Indian Institute of Management in that behalf which can be said to be circumstantial evidence."

4. In this manner, the statements of the students recorded in the first departmental inquiry have been taken into account and considered and accepted to arrive at the findings by the Government and that was supported by the circumstantial evidence of the complaint made by the students and letter of the the Institute of Management. The complaint and letter aforesaid were also present at the earlier stage and were not considered as

sufficient for arriving at any conclusion. Once the court has not accepted the evidence of those three students witnesses and discarded that evidence on the ground that the petitioner was not given a reasonable opportunity to cross-examination by providing a friend of his choice and that evidence cannot be accepted in the fresh inquiry unless those witnesses or any of them is produced before the inquiry officer. If the evidence of those students witnesses is not accepted the petitioner is liable to be exonerated from the charges as in the subsequent inquiry those witnesses have not been produced. As such, the petitioner has no opportunity to cross-examine those witnesses by a friend of his choice and without affording a reasonable opportunity to cross-examine the witnesses, their evidence cannot be accepted against the petitioner as it violates the principle of natural justice. Thus, it is a case wherein the principle of natural justice has been violated and there is no evidence to corroborate the allegation of the complaint by the best witnesses who were examined at the earlier stage but not in the subsequent fresh departmental inquiry. Thus, I am of the view that The statements of the three students recorded in the earlier inquiry cannot be accepted in the second inquiry without affording the opportunity to cross-examine, to the petitioner and the complaint and letter stated above which were not considered as sufficient to arrive at any conclusion can not be considered as sufficient to arrive at any conclusion in the fresh inquiry.

5. Learned counsel for the petitioner further contended that the petitioner was permitted to be assisted by a friend of his choice in the departmental inquiry. But the petitioner was not allowed to represent at the time of revision by the State Government even though the petitioner had requested for assistance of a friend of his choice before the State Government. That also amounts denial of reasonable opportunity as contemplated u/s 27-A of the Act. In this connection, the learned counsel for the petitioner referred to the paragraph no. 7 of the impugned order wherein the Department has held "an applicant can have the assistance of a friend of his choice at the time of departmental inquiry. There is no provision of law to have the assistance of a friend at the stage of revision appeal. In spite of that as per the show cause notice the applicant was heard personally on 8-7-86. Therefore, this point is baseless." The petitioner was personally heard on 8-7-86. On this basis, the reasonable opportunity was denied to the petitioner.

6. I have considered carefully the arguments advanced by the learned counsel for the petitioner. I find force in his contentions. Once the petitioner has been allowed to be assisted by a friend of his choice during the proceedings and the petitioner was assisted by his friend till conclusion of the departmental inquiry by the Inquiry Officer. When the petitioner was exonerated from all the charges levelled against him. The State Government has revised the orders of the Deputy Commissioner of Police and it is in the interest of the petitioner and reversing that order it was necessary for the State Government to provide assistance of a friend of his choice to the petitioner and not allowing the friend to assist the petitioner or non-assistance to the petitioner at the time of hearing on 8-7-86 violates the principle of natural justice and denies the reasonable opportunity for which earlier the petitioner was allowed by this Court on the ground that the petitioner was not afforded an opportunity of assistance of a friend of his choice. The impugned order is violative of the principle of natural justice and denial of reasonable opportunity is in my view not sustainable in the eye of law.

7. Without going into other contentions raised by the learned counsel for the petitioner I think that the aforesaid grounds are sufficient to quash and set aside the impugned order. Accordingly, the petition is allowed and the impugned order dated 17-1-87 passed by the State Government is quashed and set aside. The order dated 26-7-84 passed by the Commissioner of Police is also quashed and set aside and the respondents are directed to give all consequential benefits to the petitioner as the impugned orders have not been passed against the petitioner, within three months from the presentation of a certified copy of this judgment. Rule is made absolute accordingly.

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/JVSatwara/